

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-21943-CIV-SEITZ/MCALILEY

TODD C. SMITH,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER AFFIRMING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

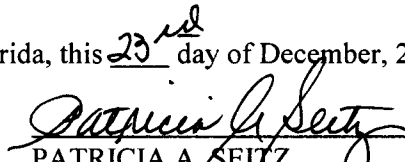
THIS MATTER is before the Court upon the Report and Recommendation [DE-14] of the Honorable Patrick A. White, United States Magistrate Judge, to which no party has filed an objection. Magistrate Judge McAliley recommends denying Petitioner's 28 U.S.C. §2255 Motion to Vacate because (1) it was not raised on direct appeal and the Petitioner has not shown cause for default, and (2) because the Court acted within its discretion in imposing part of Petitioner's federal sentence consecutively to his undischarged state sentence.

After carefully reviewing, *de novo*, the entire record and pertinent legal authorities, the Report and Recommendation shall be affirmed and adopted. Accordingly, it is hereby

ORDERED that:

- (1) The Report and Recommendation of Magistrate Judge White [DE-14] is AFFIRMED and ADOPTED;
- (2) Petitioner's Motion to Vacate under 28 U.S.C. §2255 [DE-1] is DENIED; and
- (3) All pending motions not otherwise ruled upon are DENIED AS MOOT and this case is CLOSED.

DONE and ORDERED in Miami, Florida, this 23rd day of December, 2009.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc:
Counsel of Record/*Pro Se* Parties